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ATTORNEY GENERAL

June 20, 1975

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Dear Mr. Montiel:

In your letter of May 15, 1975 you posed the following question:

Is a taxpayer entitled to a refund of real property taxes for two prior years (1972 and 1973) where a parcel of real property has been assessed and the taxpayer has, without protest, timely paid the taxes on the basis of commercial real property where the property has only been used for the taxpayer's residence?

The answer to your question is "No". The taxpayer failed to file an appeal in Superior Court under A.R.S. § 42-151 on or before November 1 of each tax year; therefore, he cannot use the direct appeal procedure to obtain a refund. Since he also failed to pay the taxes under protest, he cannot bring a suit for refund under A.R.S. § 42-204. Therefore, he has no recourse.

The only other possible remedy would be for a correction of an error under A.R.S. §§ 11-505, 11-506 and 42-405. However, during the tax years in question, the type of error which could be corrected was limited to a clerical error or an error which could be ascertained from the records of the County Assessor. The type of error referred to in your question does not fit within the category of correctible errors under the then existing law. In any case, application for refund had to have been made within one year from the date of payment.

In addition, there was a special relief bill passed in the First Special Session of the Thirty-First Legislature

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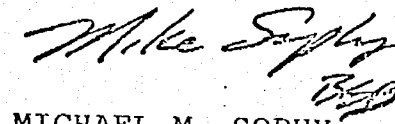
(Ch. 1, House Bill 2003) which permitted the correction of classification errors for the 1973 tax roll only. Application for a refund under this bill also had to be made one year from the date of payment, and the power of the county to make any refund expired on June 1, 1974. Therefore, it is clearly evident that the taxpayer in question cannot take advantage of that special relief bill.

The Legislature has in this Session passed Senate Bill 1035 which provides for the correction of errors. The scope of the errors which can now be corrected has been expanded beyond a mere clerical error, although a mistake in judgment still cannot be corrected under the new law. This new law now provides a vehicle for a refund without first paying under protest and instituting suit where an error has been made. Application for a refund under the new law must also be made within one year from date of payment. The effective date of the Bill is May 22, 1975, the date it was signed by the Governor. Therefore, since applications for refund must be within one year from payment, those taxpayers who timely paid their prior year's taxes, such as the taxpayer in question, will be unable to utilize this new law.

I am sending you a copy of the Bill as signed by the Governor for your future reference. It may be helpful for future problems in this area.

Very truly yours,

BRUCE E. BABBITT
Attorney General



MICHAEL M. SOPHY
Special Assistant
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Enclosure